Supreme Court, U.S.
FILED

03 791 JUL 8 2003

OFFICE OF THE CLERK

No.

In the
Supreme Court of the United States

GILDA A. KLEIN,

Petitioner,

v.

JOHN E. POTTER, POSTMASTER GENERAL,

Respondent.

On Petition for Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

GILDA A. KLEIN
10325 South Peoria Street
Chicago, Illinois 60643
(773) 779-2595

Pro Se

Midwest Law Printing Company/Photex — Chicago — (312) 321-0220

QUESTIONS PRESENTED FOR REVIEW

I. Whether petitioner, a U.S. citizen should have been investigated and fired from her employment of twenty-eight years, eight months and five days of exemplary service for exercising her Constitutional Rights under the First Amendment Freedom of Speech for having participated in a peaceful demonstration?

II. Whether or not male and female employees should be reprimanded differently for similarly situated conduct?

III. Whether or not petitioner should be denied equitable make-whole relief to redress discrimination?

IV. Whether or not Congress intended for the statutory language of Federal Employee Compensation Act (FECA) to preclude a federal employee from pursuing Title VII remedies for discrimination?

LIST OF PARTIES

☒ All parties appear in the caption of the case on the cover page.

☐ All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

CERTIFICATE OF INTEREST

Appellate Court No. 02-1140

Short Caption: Gilda A. Klein v. John Potter, Postmaster General

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party or amicus curiae, or a private attorney representing a government party, Must furnish a certificate of interest stating the following information in compliance with Circuit Rule 26.1. NOTE: Counsel is required to complete the entire certificate and to use N/A for any information that is not applicable.

(1) The full name of every party or amicus the attorney represents in the case: Not applicable, appellant is pro-se.

(2) If such party or amicus is a corporation: Not Applicable

i) Its parent corporation, if any: Not Applicable

ii) A list of stockholders which are publicly held companies owning 10% or more of the stock in the party or amicus: Not Applicable

(3) The names of all law firms whose partners or associates have appeared for the party in the case or are expected to appear for the party in this court: Not Applicable

This certificate shall be filed with the appearance form or upon the filing of a motion in this court, whichever occurs first. The attorney furnishing the certificate must file an amended certificate to reflect any material changes in the required information. The text of the certificate (i.e. caption omitted) shall also be included in front of the table of contents of the party's main brief.

Attorney's Signature: /s/ Gilda A. Klein, Pro-Se

Attorney's Printed Name: Gilda A. Klein, Attorney Pro-Se

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PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit in this case

OPINIONS BELOW

The opinion of the United States District Court for the District of Northern Illinois granting the United States' motion for summary judgment appears at Appendix B and is unpublished. The Seventh Circuit Court of Appeals' opinion affirming the district court's decision appears at Appendix A and is unpublished. The Seventh Circuit Court of Appeals order denying rehearing appears at Appendix C to this petition and is not published.

STATEMENT OF JURISDICTION

The Seventh Circuit Court of Appeals entered its opinion and order on August 20, 2002, and denied a rehearing on April 14, 2003. This petition for writ of certiorari is timely filed within 90 days of the denial of petition for rehearing. Petitioner invokes this Court's jurisdiction under 28 U.S.C. 1254(I).

CONSTITUTIONAL & STATUTORY PROVISIONS INVOLVED

First Amendment Constitutional Right, 42 U.S.C. 2000e *et seq.* of the Civil Rights Act of 1964/1991 as well as 5 U.S.C. 8101-8193 of the Federal Employees Compensation Act.

STATEMENT OF THE CASE

This case arises out of the U.S. District Court, Northern District of Illinois, Eastern Division. The petitioner was the plaintiff in the trial court and the appellant in the District Court of Appeals, in and for the Seventh Circuit of Illinois and petitioner is seeking a writ of certiorari from the United States Supreme Court. Respondent was defendant/appellee, Respondent respectively below. The parties shall be referred to by their appropriate designations in this Court.

The court of first instance had jurisdiction to hear petitioner's claims of Constitutional violations and petitioners claims of discrimination under Title VII (App. A)

The petitioner describes this case as a violation of First Amendment Constitutional Right (Freedom of Speech and the right to peaceful assembly), and discrimination under the laws of Title VII (Sex). A full reading of the petition will give clarity and proof of the petitioner's meritorious claim(s) of constitutional, statutory and Title VII violations.

Petitioner, an African American female, a former employee of the United States Postal Service with 28 years, 8 months and 5 day tenure with an exemplary employment record, exercised her 1st Amendment right and participated in an informational picket with African American male co-workers, Earl Hicks and Carmen McClintonnel on March 6, 1998. Observation by the Postal Service accused petitioner of criminal activity and took steps to remove her from her employment. (App. D)

On March 10, 1998, petitioner was placed on administration leave pending an investigation of her actions. On March 27, 1998, petitioner was subjected to tangible acts of employment i.e., discharged and deprived of her property interest for a period of six months. (App. D)

These tangible acts of employment were not for "just cause" as record evidence affirmatively shows petitioners "Notice of Removal" was expunged from her record, petitioner was returned to full duty work on August 20, 1998 and petitioner was awarded back pay from March 31, 1998 thru August 19, 1998. In addition, petitioner being subjected to a pattern of abuse was awarded back pay for a 14 Day Suspension dated January 29, 1998, 7 Day Suspension dated August 14, 1997 and an Emergency Placement dated July 31, 1997. (App. E, F) Male co-workers, Carmen McClintonnel and Earl Hicks participated in the informational picket but were not subjected to the same adverse conduct by the employer. (App. G)

Petitioner, a pro-se litigant, advanced claims of sex discrimination to the lower courts but these claims were never addressed. (App. A, B and C) Petitioner was subjected to proving jurisdiction, which was improper and unwarranted; in that the court had jurisdiction. (App. A)

Petitioner was given "oral leave of court" by Judge, Robert Gettleman on July 19, 2001, to file an Amended complaint. Petitioner complied on September 18, 2001. (App. H)

Record evidence affirmatively shows petitioner's Amended Complaint sued William J. Henderson "solely" in his official capacity, which pre-empted the Respondents' allegations of petitioner filing a Bivens or a Tort Claim. (App. I) The record shows the Seventh Circuit Court of Appeals ruled on petitioner's Amended Complaint in favor of the Postmaster General in his official capacity. (App. C,H) Petitioner acted pursuant to her rights under the law and filed a claim for Workers Compensation for Intentional Infliction of Emotional Stress for which claim was accepted. (App. J)

Petitioners' claim of sex discrimination under Title VII which would have afforded petitioner make whole relief to redress discrimination, was not addressed in the lower court. (App. A, B and C)

REASONS FOR GRANTING WRIT OF CERTIORARI

I. This proceeding involves the important question of the rights of citizens to exercise their constitutional rights free from retaliation.

Petitioner in this action argues that she was fired for exercising her Constitutional Right under the First Amendment to engage in a peaceful demonstration, which did not disrupt the employer's enterprise. The lower court ignored this genuine issue of material fact as a matter of law.

II. The Civil Rights Act bars discrimination based on gender. Title VII 2003e *et seq.*

Petitioner also argues the lower court failed to address petitioner's Title VII claims of sex discrimination because of gender. These wrongful acts by Respondent are barred by the *Civil Right Act of 1991,* in that employer's rules or policies applying to one gender violates Title VII. Employers also may not provide different benefits to women than to men. Discrimination based on sex violates Title VII.

Petitioner has established a prima facie case of discrimination thru admissible evidence. These acts and wrongful conduct by the Respondent's in their exercise of abuse of power were actions the Appeals Court had jurisdiction to hear under the *Constitution 1st Amendment rights, The Civil Rights Act of 1991 (Title VII.).*

III. Congress did not intend for the Federal Employees Compensation Act to Bar Petitioner from make-whole relief.

Petitioner argues that claims for discrimination are not type covered by typical workers compensation acts or by Federal Employees Compensation act . *Metz v. U.S. D. Md*

1989 723 F. Supp. 1133. Federal employees filing for and receiving workers compensations benefits under FECA, for work related stress injury did not bar recovery under Title VII or rehabilitation act; Title VII and rehabilitation act remedy were equitable make whole relief to redress discrimination, not damages for workplace injury. *Johnson v. Sullivan, D. Md 1991, 764 F. Supp 1053.* Petitioner argues the court is aware of no law that precludes a FECA beneficiary from recovering for discrimination under Title VII or the *Rehabilitation Act 5 U.S.C. 8101-8193.* Petitioner argues the court finds that FECA was not intended to prevent claims under Federal anti-discrimination statutes. *Smith v. Barton, 914 F. 2d 1330 (9th Cir. 1990).*

Petitioner argues her exclusive remedy under FECA for emotional distress did not exclude injury for discrimination or loss of employment. The Third Circuit in *Miller v. Bolger, 802 F.2d 660 (3rd Cir. 1986)* has held that FECA recovery for injuries does not preclude claims for at least some Title VII recoveries. In that case, the court compared the statutory frameworks of Title VII and FECA and concluded that while FECA is an exclusive source of damages for workplace injuries, Title VII remedies are considered equitable make whole relief to redress discrimination. *Id. at 663.*

The court concluded:

> The legislative histories of FECA and Title VII make clear that the statutes create separate remedies against the United States for distinct types of injuries. The statutory language of FECA does not preclude a federal employee from pursuing Title VII remedies for discrimination and we find no evidence that Congress intended to do so.

CONCLUSION

This petition for a Writ of Certiorari should be granted.

Respectfully Submitted,

GILDA A. KLEIN
10325 South Peoria Street
Chicago, Illinois 60643
(773) 779-2595
Pro Se

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APPENDIX A

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

Submitted August 20, 2002*
Decided August 20, 2002

Before
Hon. William J. Bauer, Circuit Judge
Hon. Michael S. Kanne, Circuit Judge
Hon. Terrence T. Evans, Circuit Judge

No. 02-1140

GILDA A. KLEIN, *Plaintiff-Appellant*,	) Appeal from the United) States District Court for) the Northern District of) Illinois, Eastern Division
v.	)
	) No. 01 C 2357
JOHN E. POTTER, et al., *Defendants-Appellees.*	) **Robert W. Gettleman,**) Judge.

ORDER

Postal worker Gilda A. Klein participated in a protest during which she carried a sign and made statements

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* After an examination of the briefs and the record, we have concluded that oral argument is unnecessary. Thus, the appeal is submitted on the briefs and the record.

criticizing her employer. In response Klein's supervisors temporarily removed her from her position, but after her reinstatement, Klein declined to return to her job and instead filed suit in district court, seeking damages. The district court dismissed, and Klein appeals. We affirm.

In March 1998 Klein was working as a window clerk at the Auburn Park Station in Chicago. She was a 28-year veteran of the United States Postal Service and at the time served as a Vice President of the National Alliance of Postal and Federal Employees. That month during a protest outside the Auburn Park Station Klein carried a sign that read "Long Lines, Late Delivery, Don't Believe the Hype." And used a bullhorn to criticize the Postal Service and Chicago Postmaster Rufus Porter. Shortly thereafter, the Postal Service placed Klein on administrative leave. In compliance with the collective bargaining agreement between the Postal Service and the American Postal Workers Union ("APWU"), Klein filed a grievance requesting that she be returned to full duty. The Postal Service and the APWU were unable to resolve the dispute, and Klein received a Notice of Removal.

Klein filed a second grievance, and this time the Postal Service and the APWU reached a settlement. The Postal Service expunged the Notice of Removal from Klein's record, returned her to full duty status, and gave her back pay.

But the stress of her dispute with the Postal Service had aggravated Klein's pre-existing disorder, and as a result she did not return to work. Instead Klein filed a worker's compensation claim with the United States Department of Labor and was awarded benefits. Klein never returned to her job.

Klein then sued the Postmaster General, the Chicago Postmaster, and two supervisors at the Auburn Park Station, alleging violations of her First Amendment rights

and the intentional infliction of emotional distress. The defendants moved to dismiss for lack of subject matter jurisdiction, arguing that Klein's claims were pre-empted by the Postal Reorganization Act and the Federal Employees Compensation Act. The district court dismissed.

Individuals may sue federal officials for damages based on violations of the Constitution, *see Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics,* 403 U.S. 388 (1971), unless a comprehensive administrative scheme already affords a meaningful remedy, *see Bush v. Lucas,* 462 U.S. 367 (1983); *Bogola v. Kindt,* 131 F. 3d 632, 640-642 (7th Cir. 1997). This is so even if the remedies available under the administrative scheme do not provide complete relief for the plaintiff. *Bogola,* 131 F.3d at 640-41; *Robbins v. Bentsen,* 41 F.3d 1195, 1201 (7th Cir. 1994). Thus we have held that federal employees covered under the Civil Service Reform Act ('CSRA') may not pursue a *Bivens* suit based on an adverse personnel decision *Robbins, 41 F.3d at 1202,* and Postal Service employees enjoy the substantive and procedural safeguards of the CSRA as modified by the collective bargaining agreement negotiated on their behalf, 39 U.S.C. 1005 (a)(1). A detailed four-step grievance process is available to postal workers who wish to challenge employment actions; Klein took advantage of and obtained relief through this grievance process. The Postal Service's grievance process is exactly the kind of comprehensive administrative scheme that bars a *Bivens* action. *Roman v. United States Postal Serv.,* 821 F .2d 382, 386 (7th Cir. 1987); *Ellis v. United States Postal Serv., 784* F.2d 835, 839-40 (7th Cir. 1986).

Klein First Amendment claim therefore was properly dismissed. We note, however that lack of subject matter jurisdiction was an improper ground for dismissal. Federal courts have jurisdiction over all cases that, like Klein's arise under the Constitution. 28 U.S.C. 1331. The issue

here is not the district court's power to hear Klein's First Amendment claim, but rather its authority to grant relief. As we have noted, the Postal Service's comprehensive grievance process precludes relief under *Bivens*, see *Roman, 821 F.2d at 386; Ellis,* 784 F.2d at 839-40, and therefore the appropriate basis for dismissing Klein's constitutional claim was failure to state a claim upon which relief can be granted, not lac of subject matter jurisdiction. *Massey v. Helman,* 196 F.3d 727, 737-38 (7th Cir. 1999). On that basis we affirm the dismissal. *Id.*

In addition to her constitutional claim, Klein raised a claim under the Federal Tort Claims Act ("FTCA"), 28 U.S.C. 2671 *et seq.*, alleging that her supervisors intentionally inflicted emotional distress. But Klein did not exhaust her administrative remedies before filing suit as required by the FTCA, see *28 U.S.C. 2675(a)* and the district court therefore lacked jurisdiction over the claim, see *Frey v. EPA, 270 F .3d 1129, 1135 (7th Cir. 2001)*

Klein raised a third claim that the district court did not address in its dismissal order; that her supervisors discriminated against her on the basis of race and sex in violation of title VII of the Civil rights Act of 1964, 42 U.S.C. ss 2000e *et seq*. But Klein never presented her allegations to the EEOC and therefore has not exhausted her administrative remedies as required before filing suit. *42 U.S.C. § 2000e-16; see Gordon v. United Airlines, 246 F.3d 878, 883 n.3 (7th Cir. 2001).*

AFFIRMED

APPENDIX B

Case Number: 01 C 2357 Date: November 29, 2001

Name of the Assigned Judge: Robert W. Gettleman

Case Title: Gilda Klein V. John E. Potter, et al.,

* * * *

DOCKET ENTRY:

(10) ☒ {other docket entry]
Defendant's metion to dismiss for lack of jurisdiction is granted.

(11) ☒ [For Further detail see order on the reverse side of the original minute order.]

[Reverse Side]

ORDER

Plaintiff Gilda Klein was fired from her job at the Auburn Park post office for participating in a protest directed at defendant, Chicago Postmaster Rufus Porter. She grieved her discharge (arguing First Amendment rights) and ultimately won a settlement pursuant to which she was reinstated with full back pay and all disciplinary actions expunged from her records. Rather than return to work, plaintiff filed a claim with the United States Department of Labor, Office of Workers compensation, seeking benefits for an alleged aggravation of anxiety disorder resulting from her improper discharge and the grievance procedure. Her claim was accepted and plaintiff was awarded benefits. Plaintiff then filed the instant two count pro se action against Porter, John Potter, Postmaster General, and two of plaintiff's supervisors at Auburn Park,

Paula McHenry and Annette Frazier, alleging a violation of her First Amendment rights to free speech and infliction of emotional distress. Defendants' have moved to dismiss for lack of subject matter jurisdiction.

Count I, which the court construes to be brought pursuant to *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971), is dismissed. The administrative review mechanism created by Congress and pursued with success by plaintiff provides a meaningful remedy and thus foreclosed the implication of a judicially crafted cause of action under *Bivens. Correctional Services Corp . Maleski, S.*Ct.__, 2001, WL. 1488029 (Nov. 27, 2001), *Bush v. Lucas*, 462 U.S. 367, 390 (1983); *Alice v. U.S. Postal Service*, 784 F .2d 835, 839-40 (7th Cir. 1986).

Absent Court I, the court lacks subject matter jurisdiction over Court II which appears to be a claim for infliction of emotional distress arising from Postmaster Porter's and other supervisors' conduct. Any such tort claim would have to proceed against the United States pursuant to the Federal torts Claim Act, 39 U.S.C. 409, but is precluded by the Postal Reorganization Act, 39 U.S.C. § 1001 et seq., and the Civil Service Reform Act, 5 U.S.C. § 7501 et seq., *See Kennedy v. United States Postal Service* 145 F.3d 1077 (9th Cir. 1998).

Accordingly, for the reasons set forth above, defendant's motion to dismiss for lack of jurisdiction is granted.

APPENDIX C

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

Submitted September 3, 2002
Decided April 14, 2003

Before
Hon. William J. Bauer, Circuit Judge
Hon. Michael S. Kanne, Circuit Judge
Hon. Terrence T. Evans, Circuit Judge

No. 02-1140

GILDA A. KLEIN, *Plaintiff-Appellant*,	) Appeal from the United States District Court for the Northern District of Illinois, Eastern Division
v.	) No. 01 C 2357
JOHN E. POTTER, et al., *Defendants-Appellees.*	) **Robert W. Gettleman**, Judge.

ORDER

On September 3, 2002, the plaintiff-appellant filed a petition for rehearing. All the judges on the original panel have voted to deny the petition, and it is therefore DENIED.

APPENDIX D

FORM 2A- NON VETERAN PREFERENCE

DATE: March 27, 1998

SUBJECT: NOTICE OF REMOVAL

TO; Gilda Klein — 335-46-7021
Employee's Name — Soc. Sec. No

Window Clerk, Full-Time — 020
Job Title — Pay Loc.

You are hereby given not less than 30 days advance written notice of your removal from the Postal Service. The reason for this action is:

CHARGE: UNACCEPTABLE CONDUCT

On March 6, 1998, at approximately 4:00 P.M., you were observed participating in a protest demonstration outside the Auburn Park Post Office. You were observed marching with other people and carrying a picket sign that read "Long Lines, Late Delivery. Don't believe the hype." You were also using a Bullhorn loud speaker to say "Porter must go."

Your actions were a deliberate attempt to bring notoriety, and adversely affect the reputation of the Postal Service and undermine the publics confidence in the ability of the Postal Service to accomplish its mission.

When interviewed about your actions, you refused to make any comment.

You violated section 661.53 of the ELM with states, "No employee will engage in criminal, dishonest, notoriously disgraceful or immoral conduct, or other conduct prejudicial to the Postal Service. Section 666.2 of the ELM states "Employees are expected to conduct themselves during and outside of working hours in a manner that reflects favorably upon the Postal service."

Further, the unsubstantiated allegations of "Long lines and Delayed Mail" were an attempt to tarnish the Postal Service's image.

The following elements of your past disciplinary record have been considered in taking this action:

14 Day Suspension—January 29, 1998—AWOL

7 Day Suspension—July 29, 1997—Unacceptable Conduct

You have the right to file a grievance under the Grievance-Arbitration procedure set forth in Article 15, Section 2 of the National Agreement within 14 days of your receipt of this notice.

"If this action is overturned on appeal, back pay will be allowed, unless otherwise specified in the appropriate award or decision. ONLY IF YOU HAVE MADE REASONABLE EFFORTS TO OBTAIN OTHER EMPLOYMENT DURING THE RELEVANT NON-WORK PERIOD. The extent of documentation necessary to support your back pay claim is explained in the Employee and Labor Relations Manual, Section 436." (COPY ATTACHED)

/s/Annette W. Fraizer	/s/ P. McHenry
Signature of Supervisor	Approved by Installation Head or Designee

/s/ Annette W. Frazier
Name of Supervisor (Printed)

Received by Employee_____

Date: 03/31/98 Time_____

Mailed certified & reg. mail

APPENDIX E

LABOR RELATIONS
CHICAGO DISTRICT

UNITED STATES POSTAL SERVICE

J94C-4J-D 98073261 Dist 606
04/16/98 722M78
KLEIN G
CHICAGO IL 6060-9511

July 29, 1998

John Clark
APWU National Business Agent
330 S. Wells #810
Chicago, Il 60606

SUBJECT: STEP 3 SETTLEMENT DECISION

Case Number: J94C-4J-D98073261
Grievant: Gilda Klein PL 020
Article Code: 16.7000, 65.0200

Pursuant to the terms and obligations as set forth in Article 15 of the National Agreement, management and union designee met at Step 3 of the grievance procedure. The results of the meeting on the above referenced case are as follows:

As a final and complete settlement of the subject grievance, the following resolution has been arrived at between the parties:

Solely in an effort to settle this grievance, the Notice of Emergency Placement dated July 31, 1997 is hereby rescinded. The grievant will be paid at the straight-time rate for time lost due to the emergency placement.
(Dates of emergency placement included August 1, 4,5, 6,7,8. 1997.)

/s/Cindy M. Wheeler — 7-29-98
Step 3 Management Designee — Date

/s/ John Clark — 7-31-98
Step 3 Union Designee — Date

APPENDIX F

UNITED STATES
POSTAL SERVICE

August 14, 1998

John Clark
APWU Business Agent
330 S. Wells Street Suite 810
Chicago, Il 60606

SUBJECT: STEP 3 SETTLEMENT DECISIONS

Case Numbers:	J94C-4J-D 98102699
	J94C-4J-D 98102702
	J94D-4J-D 98073261
Grievant:	Gilda Klein PL 020
	16.3000, 16.4000, 16.500

Pursuant to the terms and obligations as set forth in Article 15 of the National Agreement, management and union designee met at Step 3 of the grievance procedure. The results of the meeting on the above referenced case are as follows:

As a final and complete settlement of the subject grievances, the following resolution has been arrived at between the parties:

The Notice of Removal dated March 27, 1998 is hereby expunged from the grievant's record. She will be paid lost straight-time work hours from March 31, 1998 to August 19, 1998. She will return to duty on August 20, 1998.

The 14 Day Suspension dated January 29, 1998 issued to the grievant for AWOL is hereby expunged from her record. She will be paid for one week of the suspension for lost straight time work hours.

The 7 Day Suspension issued to the grievant dated August 14, 1997 for unacceptable conduct will be expunged from her record with no back pay on August 14, 1999 provided she is issued no further discipline

/s/ Cindy M. Wheeler	8-14-98
Step 3 Management Designee	Date
/s/ John Clark	8-14-98
Step 3 Union Designee	Date

APPENDIX G

Ms. Gilda Klein Holding a Picket Sign and Marching in Front of Auburn Park Post Office. The Sign that She was Carrying Stated Long Lines, Late Delivery, and Don't believe the Hype. I also observed Mr. Earl Hicks along with his (Minor) Son Marching and Carrying a Sign. I Can't Recall what his sign Stated. Mr. McClintonnel was also Marching in the Picket Line but I can't Recall whether or not he was carrying a Sign but He did Participate in the Picket against Management and Auburn Park Post Office and the Postal Service.

/s/ Annette Frazier

3/20/98

APPENDIX H

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

GILDA A. KLEIN	)	
Plaintiff,	)	No. O1 C 2357
	)	
v.	)	Filed September 18, 2001
	)	
WILLIAM J HENDERSON	)	
POSTMASTER GENERAL	)	JUDGE GETTLEMAN
Defendant.	)	

AMENDED COMPLAINT

[Full Text Not Included]

APPENDIX I

AO 450(Rev. 5/85)Judgment in a Civil Case

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JUDGMENT IN A CIVIL CASE

Gilda Klein

v. Case Number 01 C 2357

JOHN E. POTTER

☐ Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury rendered its verdict.

■ Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS HEREBY ORDRED AND ADJUDGED that defendant's motion to dismiss for lack of jurisdiction is granted.

Michael W. Dobbins, Clerk of Court

Date: Nov. 29, 2001 /s/ George D. Shwemin
George D. Schwemin, Deputy Clerk

APPENDIX J

File Number 100483092
6030b2b-0-P

U.S. DEPARTMENT OF LABOR

DEPARTMENT STANDARDS ADMINISTRATION OFFICE OF WORKERS COMPENSATION
230 S. DEARBORN, 8th FLOOR
CHICAGO, IL 60604
Phone (312) 596-7157

January 3, 2001

Date of Injury: 03/10/1998
Employee: Gilda Klein

Gilda Klein:
10325 S. Peoria
Chicago, IL 60643

Dear Ms. Klein:

I am writing in reference to the above cited case, which has been accepted for an aggravation of anxiety disorder.

PAYMENT OF COMPENSATION. Compensation is being paid from August 20, 1998 to August 23, 1999. As discussed in our telephone conversation of yesterday afternoon, the evidence of file indicates that you were paid by your employing agency through August 19, 1998. In addition, we cannot yet pay you for compensation after August 23, 1999, because you had earnings in the private sector. We are awaiting information from the Social Security Administration regarding your earnings before we can pay you the difference for the time during which you worked.

The pay-rate for compensation purposes is the one on the date you last performed work for the U.S. Postal Service (which is also the date of injury). March 10, 1998. On that date your annual pay-rate was $37,456 which is $720.30 weekly. You are being paid at a compensation rate of 75% because you have at least one dependent. We deducted for your health benefit plain (code 105) and your optional life insurance (code X) for the following dates: 8/22/98-8/13/99. Your gross payment (after the comp rate was factored in) for the period above was $28477.84 and the check amount was $26,790.67 after health benefit and life insurance premiums were deducted.

If you wish to claim further compensation, submit Form CA-7 every two weeks. The OWCP may obtain further reports from your attending physician, refer you to a second opinion specialist, or both.

RETURN TO WORK. Full compensation is payable only while you are unable to perform the duties of your regular job because of your accepted employment-related condition. Unless your agency has told you otherwise, you re still its employee and subject to its personnel rules. You are expected to return to work (including light duty or part-time work, if available) as soon as you are no longer totally disabled because of your accepted employment related condition.

If you have not done so, ask your employing agency:

1. Whether light or limited duty work is available for partially disabled employees
2. Whether your usual job can be changed to meet your work limitations due to the accepted condition(s).

If the answer to either of these questions is yes:

1. Ask your agency to send a copy of the job description to you and to your attending physician. The job description should include the physical duties of the job.
2. Ask your physician whether and when you will be able to perform these duties. Once you can perform light or limited duty, you should report to your agency seeking such duty.

If you have any questions, please contact me at the address noted above.

Sincerely,

/s/ Julia A. Tritz
Julia A. Tritz
Senior Claims Examiner
US POSTAL SERVICE
CHICAGO POST OFFICE
INJURY COMP SPECIALIST
433 W. HARRISON 4M 4065
CHICAGO, IL 60607

APPENDIX K

CONSTITUTIONAL & STATUTORY PROVISIONS INVOLVED

This case involves the First Amendment of the Constitution of the United States which provides as follows:

> "Freedom of Religion, Speech and Press; Right of Assembly and Petition. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble and to petition the government for a redress of grievances.

This case involves Title VII, 42 U.S.D. 2000e *et seq.*, prohibits discrimination in hiring, promotion, termination, compensation and other terms and conditions of employment because of race, color, sex (including pregnancy), national origin or religion.